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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/469,575 12/22/99 ALI

S 430.134

EXAMINER

HM22/0726

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ART UNIT

PAPER NUMBER

1615

DATE MAILED:

07/26/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.

09/469,575

Applicant(s)

ALI ET AL.

Examiner

Amy E Pulliam

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

Receipt is acknowledged of the Request for Extension of Time, the Amendment A, and the Formal Drawings, all received June 11, 2001.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,183,655 to Stanislawski *et al.*. Stanislawski *et al.* teach an odor controlling animal litter comprising particles and an odor controlling liquid dispersion to be carried onto the litter particles (c 1, line 63- c 2, line 2). In column 6, example 1, Stanislawski *et al.* teach that the odor controlling liquid dispersion comprises greater than 75% water, 15% boric acid (which is equivalent to 0.097% borax), as well as surfactants and other additives. Additionally, Stanislawski *et al.* teach that certain polymers can be added, which are super-absorbent polymers to help wick away odor (c 5, l 61-63). Specifically, in claims 1 and 2, Stanislawski *et al.* teach that the liquid composition for deodorizing animal waste by direct contact therewith comprises a borate based compound (which can be borax decahydrate, see c 4, l 42), water, solvent, and surfactant. It is the position of the examiner that the teachings of Stanislawski *et al.* suggest the limitations

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of applicant's claims. Although, the purpose of Stanislawski *et al.*'s invention is to coat litter particles, the liquid dispersion is claimed as a liquid composition for deodorizing animal waste. Furthermore, the disclosure clearly teaches that the liquid dispersion is sprayed onto the litter particles, thereby rendering applicant's claim to a container obvious (c 8, l 3-4). Lastly, applicant has added new claims 8-15, which state that the malodors are from ammonia formation due to the decomposition of urea present in animal waste. Stanislawski *et al.* state that the components in their claimed composition are present in "ammonia controlling amounts." This clearly teaches that the object of this invention is to control the ammonia present in animal waste.

Therefore, applicant's new claims are also rendered obvious by Stanislawski *et al.*. It is the position of the examiner that one of ordinary skill in the art would have been motivated to use Stanislawski *et al.*'s composition as a composition to control pet malodor's, based on the disclosure. The expected result would be a composition which controls pet odors, especially those associated with pet waste. Therefore, this invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Applicant's arguments have been fully considered but are not found to be persuasive. Applicant argues that Stanislawski *et al.* do not teach entrapping malodors in a minute, transparent residue or film. Applicant further argues that there is no reason to believe that the animal litter is capable of entrapping malodors in a residue or film. The examiner respectfully disagrees as Stanislawski *et al.* teach that the polymers

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included in the composition are efficient in wicking liquid wastes and entrapping them, further bolstering odor control (column 5, lines 61-63). However, regardless of this point, the mechanism by which the odors are mitigated is insignificant. Stanislawski *et al.* do suggest the limitations of applicant's claims because they teach the same composition for the same purpose, the mechanism by which the method is achieved is not patentable. For example, an applicant is given a patent for the treatment of a headache using aspirin. Another applicant discovers that the headache is remedied by the vasodilation of the blood vessels in the head region. This applicant can not receive a patent for the treatment of a headache through the vasodilation of the blood vessels in the head region using aspirin, because this method has already been patented. Although the first applicant did not discuss how the aspirin works to relieve headache pain, the scope of their patent includes all methods to treating headaches using aspirin.

Applicant further argues that the polymers included in the Stanislawski *et al.* composition are superabsorbent polymers, and therefore can not be water soluble, as they are absorbing water instead of being dissolved in it. The examiner directs applicant's attention to column 6, lines 18-24. Here Stanislawski *et al.* specifically teach that water soluble polymers are acceptable additives in the composition. For these reasons, this rejection is maintained and applied to new claims 8-15.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy E Pulliam whose telephone number is (703) 308-4710. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3592 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
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